U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 16130740

Date: AUG. 9, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, an industrial chemist, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner asserts that he is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
>
> (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will

> substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
>
> (B) Waiver of job offer –
>
> (i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

Furthermore, while neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).[1] *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion[2], grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is

[1] In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

[2] *See also Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.[3]

II. ANALYSIS

The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. The Petitioner proposes to "generat[e] scientific advances with direct applications for [redacted] research throughout our country's [redacted] industries." For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated eligibility under *Dhanasar*'s three-prong analytical framework.

The first prong relates to substantial merit and national importance of the specific proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. The Director concluded that the Petitioner's proposed endeavor met the substantial merit and national importance requirements.

The second prong shifts the focus from the proposed endeavor to the petitioner in order to determine whether he or she is well positioned to advance the proposed endeavor. *Dhanasar*, 26 I&N Dec. at 890. The record includes documentation of his curriculum vitae, academic credentials, published articles, peer review activity, and a Ukrainian patent classification. He also offered evidence of articles that cited to his published work, and letters of support mainly describing his postdoctoral research at [redacted] University. For the reasons discussed below, the record supports the Director's determination that the evidence is insufficient to demonstrate that the Petitioner is well positioned to advance his proposed research under *Dhanasar*'s second prong.

In letters supporting the petition, several references discussed the Petitioner's postdoctoral research projects at [redacted] University.[4] For example, [redacted] stated that "while working on his project work, [the Petitioner] developed and investigated a scheme for [redacted]." However, [redacted] did not further elaborate and offer examples of how this scheme and other findings have been implemented or applauded in the chemical industry.

Similarly, [redacted] described the Petitioner's research on [redacted] pollution. Although he claimed that "[he] can guarantee that [the Petitioner's] area of research expertise has direct applications throughout the United States [redacted] Industry including [redacted] Engineering, Operations, [redacted] Plant Construction, Equipment Supply, and Specialist [redacted] Chemicals," [redacted] did not provide specific, actual examples indicating that the Petitioner's work has been utilized in any of these industries or otherwise constitutes a record of success in the field.

[3] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.
[4] While we discuss a sampling of these letters, we have reviewed and considered each one.

Additionally, [redacted] indicated that the Petitioner "explain[ed] through his research that [redacted] and "the direct conversion of [redacted] reactor has not been previously reported in literature, hence, this is considered to be an important research." However, [redacted] did not explain how this work has affected the chemical industry or otherwise represents a record of success or progress rendering the Petitioner well positioned to advance his proposed endeavor.

The record also contains a Ukrainian patent classification for [redacted] The patent lists the Petitioner along with six others as the inventors. While issuance of a patent recognizes the originality of an invention, the Petitioner has not demonstrated the significance of his innovation in the field.

The Petitioner provided the first page of articles claiming that they cited to his work. However, the articles did not support the Petitioner's assertions; the Petitioner did not include the reference pages showing that the articles actually cited to his research. In addition, the incomplete articles did not demonstrate that they differentiated the Petitioner's published material from the other cited works. On appeal, the Petitioner provides the reference pages for the articles. However, we will not consider this evidence for the first time on appeal as it was not presented before the Director. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (providing that if "the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial, we will not consider evidence submitted on appeal for any purpose" and that "we will adjudicate the appeal based on the record of proceedings" before the Chief); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). Regardless, the articles do not distinguish or highlight the Petitioner's work from the hundreds of other papers referenced in the articles.

Likewise, on appeal, the Petitioner submits three articles published by *ScienceDaily* reporting on the conversion of [redacted] We will not consider this evidence for the first time on appeal as it was not presented before the Director. *Soriano*, 19 I&N Dec. at 766; *see also Obaigbena*, 19 I&N Dec. at 533. Notwithstanding, none of the articles mention or credit the Petitioner's research, showing that it has somehow impacted the chemical industry or otherwise constitutes a record of success in the field.

As it relates to the citation of the Petitioner's work, the record includes July 2018 information from Google Scholar indicating that only two of his articles have been cited by others, 12 and 10 times, respectively. The Petitioner does not specify how many, if any, citations for each of these individual articles were self-citations by him or his coauthors. Moreover, in response to the Director's request for evidence, the Petitioner submitted an updated Google Scholar list reflecting slight citation increases to the two articles, as well as a single cite to a third article. He did not demonstrate how many of these additional citations occurred in papers published prior to or at the time of initial filing. *See* 8 C.F.R. § 103.2(b)(1). Nevertheless, the Petitioner has not shown that the number of citations received by his articles or the level of interest they generated is sufficient to demonstrate that he is well positioned to advance his endeavor.

Furthermore, the Petitioner maintains on appeal that he has a stronger citation record and "ResearchGate Score" than Dr. Dhanasar, the petitioner in our *Dhanasar* precedent decision. While we listed Dr. Dhanasar's "publications and other published materials that cite his work" among the

documents he presented, our determination that he was well positioned under the second prong was not based on his citation record. Rather, in our precedent decision we found "[t]he petitioner's education, experience, and expertise in his field, the significance of his role in research projects, as well as the sustained interest of and funding from government entities such as NASA and AFRL, position him well to continue to advance his proposed endeavor of hypersonic technology research." *Id.* at 893.

As it pertains to the Petitioner's education, while his doctoral degree from [redacted] University renders him eligible for the underlying EB-2 visa classification, he has not shown that his academic accomplishments by themselves are sufficient to demonstrate that he is well positioned to advance his proposed endeavor. In *Dhanasar*, the record established that the petitioner held multiple graduate degrees including "two master of science degrees, in mechanical engineering and applied physics, as well as a Ph.D. in engineering." *Id.* at 891. We look to a variety of factors in determining whether a petitioner is well positioned to advance his proposed endeavor and education is merely one factor among many that may contribute to such a finding.

Regarding his peer review activity, the Petitioner provided emails thanking him for reviewing nine manuscripts submitted to the *Journal of Environmental Chemical Engineering* and *Chemical Engineering Communications*. The Petitioner, however, has not demonstrated that his participation in the widespread peer review process represents a record of success in his field or that it is otherwise an indication that he is well positioned to advance his research endeavor.

The record demonstrates that the Petitioner has mostly conducted and published research while at [redacted] University, but he has not shown that this work renders him well positioned to advance his proposed research. While we recognize that research must add information to the pool of knowledge in some way in order to be accepted for publication, presentation, funding, or academic credit, not every individual who has performed original research will be found to be well positioned to advance his proposed endeavor. Rather, we examine the factors set forth in *Dhanasar* to determine whether, for instance, the individual's progress towards achieving the goals of the proposed research, record of success in similar efforts, or generation of interest among relevant parties supports such a finding. *Id.* at 890. The Petitioner, however, has not sufficiently demonstrated that his published work has served as an impetus for progress in the industrial chemical field or that it has generated substantial positive discourse in the industry. Nor does the evidence otherwise show that his work constitutes a record of success or progress in advancing research relating to industrial chemical science.

As the record is insufficient to demonstrate that the Petitioner is well positioned to advance his proposed research endeavor, he has not established that he satisfies the second prong of the *Dhanasar* framework. Accordingly, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the third prong outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite second prong of the *Dhanasar* analytical framework, we conclude that he has not demonstrated that he is eligible for or otherwise merits a national interest

waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.